

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE: . Chapter 11  
CABRINI MEDICAL CENTER, . Case No. 09-14398 (AJG)  
Debtor. . New York, New York  
Debtor. . Wednesday, March 23, 2011  
Debtor. . 11:26 a.m.

TRANSCRIPT OF MOTION BY MANNUCCIO MANNUCCI, MD, ET AL, FOR  
RELIEF FROM STAY  
MOTION BY DEBTOR CLASSIFYING AND FIXING CLAIMS FILED BY THE  
MANNUCCI PARTIES

BEFORE THE HONORABLE ARTHUR J. GONZALEZ  
UNITED STATES BANKRUPTCY JUDGE

## APPEARANCES:

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19 (Appearances Continued)

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1 (Proceedings commence at 11:26 a.m.)

2 THE COURT: All right. There are -- let me see.

3 There are two motions.

4 MR. OSWALD: Good morning, Your Honor.

5 THE COURT: Go ahead.

6 MR. OSWALD: Your Honor, Frank Oswald and my colleague  
7 Jonathan Ibsen for Cabrini Medical Center, the debtors here.

8 You're right, we do have two matters on; they both relate to  
9 the same creditor parties, named the "Mannucci Parties," four  
10 former doctors at the hospital that were parties to deferred  
11 compensation agreements with Cabrini.

12 We have, firstly, Your Honor, the debtor's objection  
13 to the claims filed by the Mannucci Parties, and then we also  
14 have a motion by them to lift the stay, in order to name  
15 Cabrini in a pending state court action, which involves the  
16 same issue, the same set of facts; and that is, in a nutshell,  
17 whether or not funds that had been set aside in accounts at  
18 Merrill Lynch pursuant to these deferred compensation  
19 agreements with the doctors were in fact funds and property of  
20 Cabrini or the property of the Mannucci Parties.

21 And as set forth in the claim objection, the proof of  
22 claim on its face simply attached the complaint from the state  
23 court action, and some of the bases that were made clear to us  
24 in connection with approval of the debtor's disclosure  
25 statement back in January; in particular, a claim of

1 constructive trust or other trust claim, was disconcerting to  
2 us, and that's why we brought on this claim motion at this  
3 time.

4 We did deal with that particular issue, the allegation  
5 that these were potentially Mannucci Party funds, to resolve  
6 the objection for disclosure statement purposes and put in some  
7 language in the disclosure statement indicating that they had  
8 that -- they were making that claim. But nowhere on the face  
9 of the claim, nor in the complaint, was that allegation made.

10 As counsel, I think, also had indicated on the record  
11 of the disclosure statement hearing, the litigation in state  
12 court proceeded as against the two non-debtor entities: One,  
13 Merrill Lynch, who's custodian of the accounts; and secondly,  
14 the Missionary Sisters, in their capacity as sponsors for the  
15 hospital.

16 Our contention in both papers, Your Honor -- and I'll  
17 deal with the motion to lift-stay; my colleague Mr. Ibsen can  
18 deal with the claim objection on the merits. But our position  
19 in a nutshell on the lift-stay, Your Honor, is that expending  
20 debtor time and resources to litigate or to otherwise be a  
21 party would be wasteful; that this Court has jurisdiction over  
22 the proofs of claim; that this Court can and should determine  
23 whether or not the funds were Cabrini's property or not. If  
24 the Court was to determine that these funds were Cabrini's  
25 property and not the Mannuccis' property, then we think the

1 issue goes away in its entirety with respect to the priority of  
2 the claim and/or this contention that there's property of non-  
3 debtor parties.

4 There is still the ancillary issue, although I don't  
5 think -- it will not hold up plan confirmation or anything of  
6 that nature. There is a discrepancy as to claim amounts. I  
7 believe that that discrepancy is due to the fact that the  
8 Mannucci Parties are using some earlier balances. These funds  
9 were in mutual fund accounts, Your Honor, so necessarily those  
10 funds balances vary day to day, month to month. And the  
11 amounts that were scheduled for the Mannucci Parties as general  
12 unsecured claims were the amounts as of the time that those  
13 accounts were closed, and the funds transferred to Cabrini.

14 So that's the overlay of the two motions before you.  
15 And I don't know on the merits whether or not you had a  
16 preference as to which one to take. It seemed to me that, if  
17 we're going to deal with issues and questions as to the claim  
18 motion, that would probably enlighten everybody as to where  
19 we're going to go on the lift-stay motion, but of course that's  
20 entirely up to Your Honor.

21 THE COURT: Well, let me hear from the other side,  
22 just as to their general view of both motions. Just stand at  
23 the podium or use the microphone at the table. You need to be  
24 in contact on a microphone.

25 MS. HARRISON: This is the money from four doctors'

1 deferred compensation plans. It has always been the doctors'  
2 position in the New York State litigation against Cabrini and  
3 the Missionary Sisters, which was started in 2008, as well as  
4 the proof of claim in this case; timely filed, which attached  
5 that complaint, that the doctors owned the money in their  
6 deferred compensation plans, so --

7 THE COURT: All right. Let me understand something  
8 from a tax --

9 MS. HARRISON: -- there's no issue of surprise here.

10 THE COURT: Just a minute. Just -- I'm speaking.

11 MS. HARRISON: Sorry.

12 THE COURT: Thank you.

13 If it is the doctors' money, what does that mean from  
14 the deferred compensation? They've already received the  
15 compensation as a tax matter?

16 MS. HARRISON: They were supposed to have received --

17 THE COURT: No, you're not addressing the question. I  
18 interrupted you for that purpose, to get you to focus on the  
19 issue.

20 To the extent this money belongs to the doctors, and  
21 in your view, if I understand it correctly, always belonged to  
22 the doctors at the point of setting up these accounts or some  
23 time even before that, does it mean, as a tax consequence,  
24 they've received the income as of that time?

25 MS. HARRISON: I am not a tax expert, but I believe --

1                   THE COURT: Well, I think you have -- my view is, is  
2 somebody should consult one. Because the theory that you're  
3 articulating, at least it seems to me could have serious  
4 ramifications from a tax standpoint.

5                   MS. HARRISON: I agree, Your Honor, and I think that's  
6 why it's important for the Court to look at what we have  
7 submitted as Exhibit E to the Harrison affidavit. This is the  
8 letter written by Cabrini in April 1997, that we call the  
9 "Cabrini Tax Problem Letter," in which that's exactly what  
10 Cabrini said, ah-hah, there's a tax problem here, we should  
11 have reported this as income to you the minute you retired.  
12 Because at that point, essentially, the reason why we should  
13 have reported it was because it was yours. And what I'm saying  
14 is exactly what Your Honor is saying. That's an admission by  
15 Cabrini that the money was theirs at that point.

16                   THE COURT: But also, it triggers a tax consequence  
17 for your clients dating back to that date, in terms of their  
18 income.

19                   MS. HARRISON: That may well be, Your Honor.

20                   THE COURT: All right.

21                   MS. HARRISON: And as I have said, I am not a tax  
22 lawyer, but that -- I accept that that may well be the case.

23                   THE COURT: All right. And then the other -- the  
24 question I have for you, if I understand the issues, all of  
25 these issues about whose money it is is before the state court

1 --

2 MS. HARRISON: Correct.

3 THE COURT: -- in a proceeding.

4 MS. HARRISON: And has been.

5 THE COURT: All right. It's before the state court.

6 And it's before me, at least -- not the issue  
7 involving any of the other defendants, but the issue involving  
8 Cabrini is before me in a form of a proof of claim. You filed  
9 a proof of claim asserting that these funds belong to your  
10 clients.

11 MS. HARRISON: Correct.

12 THE COURT: If I were to adjudicate that issue and  
13 determine the funds do not belong to your clients, what happens  
14 to the state court litigation? I mean, obviously, you would  
15 have your appellate rights, I'm not saying -- but a finding  
16 that the funds do not belong to your clients and belong to  
17 Cabrini, what then happens to the balance of the state court  
18 litigation with respect to the other defendants?

19 MS. HARRISON: I believe that we have still a viable  
20 action in the state court against the Sisters for breach of the  
21 ERISA plan for failure to pay benefits, for failure to provide  
22 benefits. In other words, Cabrini may have owned the funds,  
23 but they breached their obligation to make the distributions  
24 that were owed under the plan documents to the doctors. And I  
25 don't think -- it seems to --

1                   THE COURT: And that you would have to pursue the  
2 piercing of corporate veil --

3                   MS. HARRISON: Correct.

4                   THE COURT: -- to reach the other defendants.

5                   MS. HARRISON: Correct. But may I be heard on the  
6 argument that the money did belong to the doctors.

7                   THE COURT: No, I understand.

8                   MS. HARRISON: Okay.

9                   THE COURT: No, I don't think it's a simple case, one  
10 way or the other.

11                  And just, as you're going to prepare to respond to  
12 that, if it does belong to the doctors, what then happens in  
13 the state court? If I were to find that it does belong to the  
14 doctors, what happens?

15                  MS. HARRISON: I think the money should come off the  
16 top in this court. If the doctors can -- and I believe they  
17 should -- get full relief here, we don't need anything to  
18 happen in the state court. We don't --

19                  THE COURT: In order to achieve that, what would you  
20 have to prove here, other than -- assume the funds belong to  
21 the doctors and Cabrini spent the funds. Under what legal  
22 theory could you then get the existing funds? I'm assuming  
23 they're not the same funds.

24                  MS. HARRISON: We have admissions by Cabrini in  
25 several different documents that the funds were taken, and we

1 have exact amounts and admissions by Cabrini of the funds that  
2 were taken, which I believe under the case law is sufficient  
3 for tracing purposes. We have specific dollar amounts, such  
4 that we should be able to get those amounts back in a legal  
5 ruling by Your Honor.

6 THE COURT: And what's the theory on which you prevail  
7 in that?

8 MS. HARRISON: Under the -- some of the case law falls  
9 under the constructive trust tracing type cases within the  
10 Second Circuit, and I believe those cases are cited in our  
11 brief.

12 THE COURT: And stand for the proposition that the  
13 assumption is that the money that went out first was not their  
14 money, and the money that remained with the debtor would belong  
15 to the party asserting a constructive trust?

16 MS. HARRISON: Correct.

17 The other thing that I think we can make use of is the  
18 Howard's Appliance case has very -- which is a Second Circuit  
19 case -- has very good language about how, but for the actions  
20 of the debtor in moving the inventory, which is what prevented  
21 the trustee from perfecting the security interest, which is  
22 similar to our situation. But for Cabrini having gone in and  
23 wrongfully taking that money, it would still be sitting in  
24 those Merrill Lynch accounts, and we would know exactly where  
25 that money is, and we could go get it.

1                   And so to punish us for our inability to trace that  
2 money now because Cabrini went in early and took that money,  
3 this is the perversion of justice. And we know that under the  
4 rubric of the constructive trust cases, and also under Your  
5 Honor's broad discretionary areas, unjust enrichment principles  
6 allow you to compensate for that.

7                   THE COURT: And in order to prevail -- let's go back  
8 to ERISA -- what would you have to show in order to prevail  
9 under ERISA that this money would be treated as your money, or  
10 that there's some trust analysis?

11                  MS. HARRISON: We have plan documents, we have plans  
12 that are ERISA plan documents, which is relatively easy. We  
13 have plans that talk about benefits and what should be done  
14 with them, how they should be administered. We have a plan  
15 that was funded. They have not cited any of these so-called  
16 "top hat" cases; are all totally distinguishable because they  
17 involved very specific, concrete language about how in the  
18 plans the funds were to be general assets of the company,  
19 subject to all the creditors of the company. We have nothing  
20 like that here.

21                  So we have funded, segregated deferred compensation  
22 plan accounts here. We'll be meaning to show that, and we can  
23 show that. So we have ERISA plans, funded. And we need to  
24 show, and have shown through Cabrini admissions, the funds were  
25 taken.

1                   THE COURT: And just it may be in your papers, but  
2 what is your response to the objection to the claim? You know,  
3 I know you disagree, but procedurally I'm trying to understand  
4 how you are approaching this case.

5                   MS. HARRISON: With respect to which objection?

6                   THE COURT: Well, the objections that are before me  
7 today, I guess at least in part, is that the funds don't belong  
8 to the doctors; they belong to Cabrini. So you're  
9 acknowledging that's going to be adjudicated before me, and you  
10 want the stay left in for purposes of adjudicating the issue of  
11 alter ego? I'm not sure how you're approaching this litigation  
12 in state court and the claim litigation before me.

13                  MS. HARRISON: I think -- I think we're all here in a  
14 bit --

15                  THE COURT: Just make -- speak louder --

16                  MS. HARRISON: I'm sorry.

17                  THE COURT: -- or closer to the microphone.

18                  MS. HARRISON: We are in a bit of a gray area here.  
19 We're all here asking for alternatives.

20                  If Your Honor will make a full adjudication of who  
21 owned benefits, if Your Honor rules that my clients owned all  
22 the benefits and is satisfied that there is no tracing problem  
23 that will stop the estate from simply paying out the money that  
24 was taken from our clients, then I don't need you to lift the  
25 stay because I don't need to go back to state court.

1                   THE COURT: Uh-huh.

2                   MS. HARRISON: However, if Your Honor makes some  
3 ruling short of that, then I do need to go back to state court  
4 because I have the potential there to pursue an alter ego  
5 ruling in which I could potentially recover a hundred percent.

6                   THE COURT: All right. I understand.

7                   All right. It seems to me that, without delving too  
8 deeply into the lift-stay, that it's really premature at this  
9 time to lift the stay if this Court is going to adjudicate the  
10 threshold issue as to whose money is it or whose money was it  
11 and whether or not it can be traced, if it's determined to be  
12 the doctors' money.

13                  MS. HARRISON: That may be correct, Your Honor.

14                  THE COURT: And in that vein, where are you in the  
15 adjudication of that claim? You're here today, I know,  
16 opposing the debtor's objection to the claim. Is it your view  
17 that I can rule on the legal issues without any discovery at  
18 this point that are presented -- that are put at issue by the  
19 objection to the claim? Is it all legal argument as far as  
20 you're concerned right now?

21                  MS. HARRISON: We believe that you can find in our  
22 favor based on the factual evidence that we have put before  
23 you. We have undisputed affidavit evidence submitted by Dr.  
24 Mannucci, and we have admissions that I have submitted under my  
25 affidavit in the form of Cabrini business records and letters,

1 authored by Cabrini and/or their attorneys.

2 On the other hand, with respect to a finding in the  
3 debtor's favor as to top hat status, depending on what facts  
4 Your Honor might find, I would press for a factual hearing on  
5 some of that because I think that there might be facts that we  
6 would want to explore with respect to that. But I do think  
7 that Your Honor could find that the plans were funded without  
8 recourse from our facts.

9 THE COURT: Say that again, that were funded without?  
10 I couldn't hear the last part of what you said.

11 MS. HARRISON: Without recourse to additional facts.

12 THE COURT: All right. Thank you.

13 Let me just hear back from the debtor with respect to  
14 the objection to claim.

15 MR. OSWALD: Your Honor, if I may just again, an  
16 overview, and then Mr. Ibsen can deal with any specific  
17 questions.

18 We certainly agree, and we think the record before you  
19 now is sufficient to make the determination.

20 THE COURT: Just speak louder.

21 MR. OSWALD: We believe the record before you now is  
22 sufficient to make the determination on whose property this is.  
23 We continue to believe, if you make that determination --

24 THE COURT: Now in order to make that determination, I  
25 have to find that this is not covered by ERISA.

1                   MR. OSWALD: Or more specifically, it would be under  
2 the top hat --

3                   THE COURT: Right.

4                   MR. OSWALD: -- exception.

5                   THE COURT: And so you think, as a matter of law, the  
6 facts presented -- under the facts, as they exist in the  
7 pleadings, that I'll presume are not in dispute, you think  
8 there could be a finding that this is a top hat plan.

9                   MR. OSWALD: We do not believe there are any material  
10 facts in dispute for you to make that determination.

11                  THE COURT: And that's under the theory that there are  
12 three elements of the top hat --

13                  MR. OSWALD: Yes.

14                  THE COURT: -- criteria, and you'd have to meet all  
15 three. Oh, am I addressing this question to the --

16                  MR. OSWALD: I think in terms of -- again, we raise  
17 this issue in our papers. I'm somewhat familiar, but Mr. Ibsen  
18 is certainly more familiar, in terms of whether it's two or  
19 three. If you want to address, he can deal with the --

20                  THE COURT: No, but just give me --

21                  MR. OSWALD: We do raise a distinction as to whether  
22 we believe it's two criteria, that the third mentioning some  
23 dicta in the case --

24                  THE COURT: So where do you differ with these  
25 criteria, as opposed to your view and a doctor's view?

1                   MR. OSWALD: I'll defer to Mr. Ibsen on that piece of  
2 ...

3                   MR. IBSEN: Thank you, Your Honor. Jonathan Ibsen,  
4 Togut Segal, for Cabrini Medical Center.

5                   Specifically addressing the question you just posed to  
6 Mr. Oswald, we don't -- there's really no difference. What it  
7 is, is Cabrini, the debtors, are applying strictly the test  
8 adopted in this jurisdiction by the Demery case.

9                   THE COURT: All right. Just speak louder.

10                  MR. IBSEN: I'm sorry, Your Honor. The debtors are  
11 specifically following the controlling case law in this  
12 jurisdiction that was adopted by the case, the Demery case,  
13 cited in our papers. That provides for a two-part analysis for  
14 the top hat exemption, Your Honor.

15                  And we would -- I would agree with Mr. Oswald's  
16 position that there re no material facts at issue; this Court  
17 can make its decision right on the papers, right what's before  
18 it today, that the deferred compensation agreements fall within  
19 the top hat exemption to ERISA.

20                  The Mannucci Parties' objection, really, at the heart  
21 of it is that they're arguing that the funds that were subject  
22 to those agreements --

23                  THE COURT: Let's just stick with the top hat. Where  
24 do you differ with the doctors as to what their view of the  
25 facts are or the law is with respect to top hat?

1                   MR. IBSEN: We differ on the point of law, in that the  
2 doctors are interpreting the test as having three distinct  
3 prongs. Under Demery, Your Honor, there are two prongs: The  
4 funding prong, which Ms. Harrison has conceded can be decided  
5 based on the facts here, Your Honor; and then the second prong,  
6 which looks to whether or not the plans were offered to a  
7 select group of management or highly compensated individuals.

8                   The doctors read in a third prong of an element of  
9 control in bargaining power; however, the Demery Court did not  
10 enumerate that as an additional prong. That's where we differ.  
11 In Demery, the Court really, in dicta, looked at control as a  
12 part of the analysis, but not on the same and equal footing as  
13 the other two prongs. So that's our legal difference, Your  
14 Honor.

15                   Our factual difference is Cabrini -- and Cabrini  
16 relies specifically on the plain language of the deferred  
17 compensation agreements themselves. Your Honor, it's clear  
18 there. Although they are -- over a course of years, they all  
19 contain the same material representations. Each one of them  
20 says the funds subject to the deferred compensation agreements  
21 are Cabrini's. Each one of them says that those funds cannot  
22 be reached by the individual doctors' creditors. That fits  
23 right within the first prong, the funding part of the test of  
24 top hat.

25                   In funding, the real central element, as expressed by

1 the Demery Court, looks to whether or not the individual  
2 creditor asserting the ERISA status could maintain a claim  
3 superior to that of the general unsecured -- of the unsecured  
4 creditors of the employer. The plain language of the deferred  
5 compensation agreements themselves, Your Honor, show that the  
6 doctors can't reach that.

7 THE COURT: Well, but assume that's accurate, but the  
8 doctors are not found -- or the debtor doesn't establish the  
9 other prong or -- even if it's two prongs. What's the  
10 consequence of that? Assuming you establish that the plan is  
11 clear that the accounts do not belong to the doctors, but  
12 nonetheless they're not top hat employees. What's the  
13 consequence?

14 MR. IBSEN: Well, Your Honor, actually, we'd have to  
15 back up one point before that, would be that they couldn't even  
16 meet the other first requirement under Section 541, which is  
17 where the ERISA exception comes from, in that the documents  
18 themselves specifically provide and eliminate their ability to  
19 satisfy the prong of Section 541, that requires that the funds  
20 came into the plan either through employee withholding or  
21 contribution. The plain language of the deferred comp  
22 agreements themselves provides that these funds are being set  
23 aside by Cabrini; they're being put there -- that -- by the  
24 hospital itself, not through withholding, not through  
25 contribution. So you wouldn't even need to get to the second -

1 - to the top hat analysis.

2 THE COURT: Let me stop you there. Here's what -- the  
3 way I want to approach this now, now that I understand it  
4 better.

5 With respect to the lift-stay, I'm going to deny that  
6 without prejudice because I'm willing to adjudicate this  
7 threshold issue first. And then whatever that determination is  
8 leads you to the significance or the steps that you need to  
9 take next, both sides.

10 But with that, I don't want to hear extensive argument  
11 on it today because I'm not really prepared to hear it. I'm  
12 going to have you come back next week and then argue this  
13 objection to claim from beginning to end, both sides. But I  
14 think I now have a much better understanding of what I need to  
15 focus on between now and then to be better prepared for the  
16 argument.

17 Today is the 23rd. Come back on the 30th at ten  
18 o'clock.

19 Yes?

20 MR. OSWALD: Your Honor, I'll just note, we are on for  
21 confirmation the 30th, as well.

22 THE COURT: All right.

23 MR. OSWALD: We're on for plan confirmation the 30th.

24 THE COURT: All right.

25 MR. OSWALD: I think it may be a 9:30 start, but we'll

1 be back here next week.

2 THE COURT: All right. Well, that's -- excuse me.

3 MR. OSWALD: I can confirm that time start with your  
4 chambers.

5 MS. HARRISON: Your Honor.

6 THE COURT: Go ahead. Use the microphone.

7 MS. HARRISON: Your Honor, may I ask, rather than  
8 denying the motion to lift the stay with prejudice, our state  
9 court pleading is triggered by any decision you make on the  
10 motion to lift the stay. In other words, we have to replead as  
11 soon as you make any ruling on the motion to lift the stay.  
12 Could I ask that, rather than denying it without prejudice,  
13 that you simply hold it in abeyance?

14 THE COURT: I will do that as long as you're willing  
15 to waive any restriction upon the Court for a ruling on the  
16 motion.

17 MS. HARRISON: We will.

18 THE COURT: All right. So you work out a document,  
19 you file a document that waives any rights you have to require  
20 a ruling within a specific period of time.

21 MS. HARRISON: We will, Your Honor.

22 THE COURT: All right. Now let's go back to the  
23 hearing.

24 You have confirmation on the 30th.

25 MR. OSWALD: It's 9:30, Your Honor.

1                   THE COURT: At 9:30.

2                   MR. OSWALD: Next Wednesday.

3                   THE COURT: And how long -- this is directed to Mr.  
4 Oswald. How long do you think confirmation is going to take?

5                   MR. OSWALD: Your Honor, the only issue for  
6 confirmation to deal with is the Mannucci Parties' objection as  
7 to the scope of the injunction provision, that was referenced  
8 as part of their disclosure statement objection. That's been  
9 carried over in a new filing, but that's the objection. The  
10 other -- the plan has been overwhelmingly accepted by the  
11 creditor body. We will submit an 1129 declaration. So I think  
12 the confirmation piece should really be relatively quick,  
13 probably fifteen, twenty minutes.

14                  All right. And then my next part of the question is -  
15 - and you may have said this as you rose the first time -- what  
16 happens to confirmation if I were to rule in favor of the  
17 doctors, what's the consequence?

18                  MR. OSWALD: Your Honor, as a consequence, if you were  
19 to issue a final order, or we would have a final order from a  
20 court, what would happen is, we have in the disclosure  
21 statement, as I said, disclosed that they've taken this  
22 position. If the result is that, as Ms. Harrison said, \$3  
23 million has to come off the top, then \$3 million will be  
24 segregated from --

25                  THE COURT: All right. So it doesn't -- you can still

1 confirm the case. That was really the heart of my question.

2 MR. OSWALD: Absolutely. Yes.

3 THE COURT: All right. Well, put this argument on for  
4 the 30th. I think we should do the confirmation on the 30th,  
5 address it, move forward on that; and then, following that,  
6 have the argument on this. So subject to adjustments in our  
7 calendar and whatever else I may have, this would be --  
8 confirmation would be next to last, and this argument would be  
9 last.

10 MR. OSWALD: That's fine, Your Honor.

11 THE COURT: All right? So whether it starts at 9:30,  
12 10:30, 11 o'clock, I'll let that play itself out when I look at  
13 the calendar.

14 MR. OSWALD: That's fine, Your Honor.

15 THE COURT: All right? And just submit something with  
16 respect to the lift-stay, so we don't get caught up in any  
17 confusion about when the Court needs to rule on that.

18 MS. HARRISON: Very good.

19 MR. OSWALD: Thank you, Your Honor.

20 THE COURT: All right? Thank you all.

21 MR. IBSEN: Thank you, Your Honor.

22 MS. HARRISON: Thank you, Your Honor.

23 MR. OSWALD: Thank you, Your Honor.

24 (Proceedings concluded at 11:56 a.m.)

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## CERTIFICATION

2 I certify that the foregoing is a correct transcript  
3 from the electronic sound recording of the proceedings in the  
4 above-entitled matter to the best of my knowledge and ability.

Colleen Land

March 24, 2011

9 Coleen Rand, AAERT Cert. No.

10 Certified Court Transcriptionist/Agency Director  
11 Rand Reporting & Transcription, LLC